



OPENING ARGUMENT

For Opening Argument, a prosecutor visits the classroom after children have played the entire Missing game. The prosecutor challenges students (Grades 6 to 8) to make a statement to the jury at the beginning of Fantasma's trial. This activity was designed so prosecutors can use the Missing computer game to open a conversation about Internet safety with children.

Opening Argument requires one hour to prepare and one hour of class time for delivery. The activity has four steps.

- 1. Introduction.** The prosecutors begin by introducing themselves to students and talking briefly about why they chose this profession. Distinguish between the role of the prosecution and the defense at trial.
- 2. Preparation.** Hand out the sample arguments to the students. Each group should receive one sample only. Students should read the example and note the skills the prosecutor has used to make a strong argument. Then, lead the students in a discussion about how an opening statement is organized. Point out the stylistic devices that each prosecutor has used to persuade the jury. You may wish to write key phrases on the blackboard.

(The samples and guidelines from the prosecutors can be found on the following pages.)

- 3. Writing.** Divide the class into groups of two or three. Ask each team to prepare an opening statement for Fantasma's trial. Circulate through the room offering support and guidance. When students are finished, invite a member of each team read the statement to the class.
- 4. Conclusion.** In the conclusion, the prosecutor should congratulate the students and refer to some positive aspects of the students' work. Point out the hours of work that go into every trial of an on-line predator, using examples from court cases in your state or province. Discuss the importance of protection as opposed to prosecution: these trials can be avoided if young people protect themselves from encounters with strangers on-line.

GUIDELINES

District Attorney Tim Cruz:

1. Tell a story with a beginning, middle and end.
2. End each section with a strong statement to emphasize your point.
3. Pause before you begin your summary.
4. Read the statement with inflection in your voice.

Assistant District Attorney Duncan Brown

1. Use words that paint a strong visual picture for the jury.
2. Use phrases that compare the predator and the victim. I.e: "For Zack it started as a friendship, but for Fantasma it was always a hunt."
3. Prepare the jury for the evidence you will present at trial.

OPENING STATEMENT

By Tim Cruz, District Attorney, Plymouth County

In the summer of 1999, Zack was a lonely, unhappy 14-year old boy. Zack's father spent all of his time at work and Zack spent all of his time alone on his computer. It was during this time that Zack met a new friend over the Internet. His name was Fantasma and Zack liked him immediately. Fantasma seemed to like all the same things that Zack did. Fantasma also seemed to understand all of Zack's problems, especially his problem with his Dad. Zack thought Fantasma was his friend. Zack was wrong.

Fantasma was not his friend. In reality, he was a on-line sexual predator using Zack's own computer as a weapon to help him kidnap and abuse Zack.

You are going to hear from Zack. He will tell you how Fantasma tricked him into thinking he was his friend. How he exploited Zack's problems with his Dad in order to get Zack to trust him. How he lured Zack to California with a combination of promises and threats. Promises of a fun-filled life on the beach. Threats that they could both be in trouble with the law.

You will hear how this lonely and vulnerable boy believed these lies and ran away to California with Fantasma.

Once in California, however, the promises of a happy life lasted only a short time. Soon Fantasma began introducing Zack to his ugly world of child pornography and abuse. He began to threaten Zack and made sexual advances towards him. When Zack rejected these sexual advances, Fantasma became aggressive and threw Zack against a wall. Zack was terrified.

Meanwhile, however, Zack's father and the police were searching frantically for him. When they were close to finding Zack, Fantasma threatened to take him out of the country and taunted Zack's father that he would never see Zack again.

Fantasma then forced Zack into a duffel bag and smuggled him onto his boat, with plans of taking him to Mexico. The police, however, arrived in time to stop Fantasma and save Zack from whatever horrors lay ahead in Mexico.

Ladies and Gentlemen of the jury, the evidence that you will hear in this trial will prove to you beyond any reasonable doubt that this defendant is guilty of each and every one of the crimes he is charged with.

OPENING STATEMENT

By Duncan Brown, Assistant District Attorney, Richmond County

Ladies and gentlemen of the jury, today you are going to listen to how the defendant, Frank Buckley, gained the trust of Zack and then betrayed that trust and put Zack and many other unsuspecting child victims in serious harm, all so he could satisfy his deviant sexual appetites. You have heard the crimes the defendant stands accused of, to prove these acts the People will rely on the very words and actions of the defendant to show how he manipulated Zack to do things, and see things, no child should. Make no mistake, at the end of this trial it will be clear that the defendant purposefully and intentionally chose Zack as his prey. Coolly and deliberately he worked to gain Zack's trust, slowly making him more and more dependent on him as a friend and confidant. Then, when Zack was vulnerable, the defendant manipulated that relationship, suggesting things in a way that made Zack feel compelled, at times even eager, to comply; other times using guilt, shame, fear, subtle coercion, and even direct threats to force Zack to do his bidding.

For Zack, it started as a friendship, but for the defendant it was always a hunt. A hunt in which he chose the prey, he made the rules, and he directed the outcome. Although it may appear from some of the evidence that Zack was acting out of his own free will, make no mistake, he was not. Decisions Zack thought were innocent, or situations he thought he was in control of, were always part of a larger plan the defendant had. While Zack acted out of intentions of trust and friendship - reaching out to who appeared to be a sympathetic peer with similar interests - the defendant only ever acted with the intent to sexually exploit Zack for profit. To that end, the defendant would say anything, promise anything, offer anything, but once he had control of Zack through manipulation and force, all of those kind words and promises disappeared. The People will prove how the innocent and trusting young victim was abused and exploited by a calculating, manipulative criminal.

The People will present computer records showing contact between Zack and the defendant dating back several months to their first conversations. In these conversations the defendant ingratiates himself to Zack by pretending to be younger than he is and masking his true intentions. By gaining the trust of Zack, and making him emotionally dependent upon him, the People will demonstrate the process commonly known as grooming; that is when a defendant uses affection, attention and lies to gain the confidence of a vulnerable and otherwise unsuspecting victim in order to abuse and exploit them.

cont.

The People will also present evidence of the defendant's child pornography website and distribution ring. Unlike the sympathetic words offered initially to Zack by the defendant, these images, and the profits realized by them, are the true interest of the defendant. His desire to create, sell and use child pornography is the only reason he befriended Zack, and the fact that he abused, restrained, and exploited Zack and other children only proves that there never was really consent by any of the victims to participate; the People will present photos, emails from Zack to his father, and computer files showing the abusive lengths the defendant took to force children to participate. Thus, the People will first demonstrate how the early stages of contact between Zack and the defendant was merely a ploy by the defendant to trick Zack into trusting him. This type of grooming is common among child molesters, and it always ends in betrayal of trust and harm to the victims. In this case, the harm was the defendant kidnapping, abusing, and exploiting Zack and other children. However, the defendant left a trail of evidence while grooming, and eventually exploiting Zack, and those emails, images, and records show all too clearly the progression of betrayal and trust.

The defendant was counting on the fact that most people assume people are telling them the truth in cyberspace, and usually it is too late when they found out that they were lied to, that's what happened here, that's what happened to Zack. But fortunately, when emails are sent and received, websites visited, or information downloaded there are traces left behind, and in cases where safety is at stake, those traces can, as they did here, save a life. Comparing the email messages on the defendant's computer and Zack's, the police were able to establish that Zack was in fact sending messages to the defendant, and the defendant was in fact the person luring Zack to America via the California Dreamin' website. Likewise, using the defendant's website address the police were able to link the content of the page to the computer in the defendant's house. The police were able to search the files and memory of Zack's computer to find encrypted messages from the defendant, and the method of encryption matched code producing software in the defendant's possession. Located in the deleted files of both Zack and the defendant's computers were messages and files that both parties thought they had destroyed. Although the defendant thought the Internet provided him with the safety of anonymity, every time he used his computer to trick Zack or create child pornography, his computer was keeping a record of his activities. Those records, automatically saved by the computer itself, are what lead the police to San Diego, those records, when discovered by trained computer forensic experts are what, eventually, saved Zack from greater harm.

Ladies and gentlemen of the jury, at the end of this trial I will ask you to weigh all of the evidence and testimony, I will ask you to consider how the defendant preyed upon the youth and emotions of Zack to gain his trust, how he then manipulated that trust, and how he forcibly restrained and abused Zack and other children in order to sexually exploit them. After you have had the chance to hear this evidence, and observe the methods used by the defendant to emotionally, physically, and sexually exploit Zack and the other victims, I will ask you to find this defendant guilty on all counts. Thank you very much.